

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FERDINAND KWASHIE, ET AL.,

Plaintiffs,

- against -

GARY KAVULICH d/b/a Kavulich &
Associates, P.C.,

Defendant.

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GO, United States Magistrate Judge:

This Fair Debt Collection Act action has been referred to me for pretrial supervision. Plaintiffs commenced this action on March 21, 2011. On May 26, 2011, Judge Irizarry issued a Notice of Impending Dismissal for Failure to Prosecute.

On June 24, 2011, plaintiffs filed a status report informing the Court that because they did not receive a waiver of summons, they did not believe the defendant was properly served. Plaintiffs subsequently served the defendant and summons was returned executed on July 1, 2011. After the time to answer expired and plaintiffs did not file a motion for an entry of default, this Court issued an order on August 5, 2011 instructing the plaintiffs either to move for entry of default and, if appropriate, for default judgment or to file a status report.

On August 25, 2011, plaintiff's filed a motion for entry of default. The Clerk of Court noted entry of default the next day on

REPORT AND
RECOMMENDATION

CV 11-1363 (DLI) (MDG)

August 26, 2011. Because plaintiff requested time to conduct discovery as to their claims, this Court issued a scheduling order on September 14, 2011, requiring plaintiffs to complete discovery by December 14, 2011 and to file a status report by December 15, 2011 with a proposed schedule for default submissions or for further discovery. Plaintiffs were also directed to serve a copy of this order on the defendant and to send this Court proof of mailing. Plaintiffs failed to comply with this order.

On January 6, 2012, this Court issued a scheduling order directing plaintiffs to file a motion for default judgment by February 10, 2012. Plaintiffs have failed to file the motion or otherwise communicate with the court.

I therefore respectfully recommend that this Court, sua sponte, dismiss this action without prejudice for failure to prosecute pursuant to 41(b) of the Federal Rules of Civil Procedure.

Any objections to this Report and Recommendation must be filed with the Clerk of the Court, with a copy to the undersigned and the Honorable Dora L. Irizarry, by March 9, 2012. Failure to file objections within the specified time waives the right to appeal. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

SO ORDERED.

Dated: Brooklyn, New York
February 21, 2012

/s/
MARILYN D. GO
UNITED STATES MAGISTRATE JUDGE